IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

WRIT PETITION NO.9914 OF 2004

Shri Pandurang Bhaguji Monde. ...Petitioner.

Vs.

Shri Kacharu Gangaram Bambale & Ors. ...Respondents

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Mr. Deepa Sawant i/b. Mr. C.G. Gavnekar for the Petitioner.
Mr. S.G. Karandikar for Respondent No.1.
Mr. P.P. Kakade, AGP for Respondent No.2 and 3.

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CORAM : DR. D.Y. CHANDRACHUD, J.

April 12, 2006.

P.C.:

The Petitioner filed an application under the provisions of the Mamlatdars' Courts Act, 1906, claiming that he had been obstructed by the First Respondent on a right of way over Gat No.163 situated at Mauje Adsare Khurd, Taluka Igatpuri, District Nasik. Gat Nos.185, 186 and 190 belong to the Petitioner and Gat No.163 belongs to the First Respondent. The application filed by the Petitioner came to be allowed by the Tahsildar. Against the order of the Tahsildar, the First Respondent filed an appeal under Section 247 of the Maharashtra Land Revenue Code, 1966, which came to be converted into a revision under Section 23(2) of the

Mamlatdars' Courts Act, 1906. By an order dated 15th April 2004, the Sub Divisional Officer, Igatpuri allowed the revision filed by the First Respondent and set aside the order of the Tahsildar.

At the hearing of this petition, it was submitted that the power of revision under Section 23(2) is conferred upon the Collector and that consequently, the Sub Divisional Officer, had no jurisdiction to determine the correctness of the order passed by the Tahsildar. Under Section 23(1) of the Mamlatdars' Courts Act, it is provided that there shall be no appeal from any order passed by a Mamlatdar. Sub-Section (2) of Section 23 then provides as follows:

> "(2) But the Collector may call for an examine the record of any suit under this Act, and if he considers that any proceeding, finding or order in such suit is illegal or improper, may, after due notice to the parties, pass such order thereon, not inconsistent with this act, as he thinks fit."

In view of the submission that has been urged on behalf of the Petitioner, the State Government was directed to file an

affidavit in reply, by an order of this Court dared 18th November 2005, clarifying the provisions of law under which the SDO has exercised jurisdiction. An affidavit has accordingly been filed on 13th December 2005. Section 13(4) of the Maharashtra Land Revenue Code, 1966 provides that subject to the provisions of Chapter XIII of the Code, the Sub Divisional Officer, shall perform all the duties and functions and exercise all the powers conferred upon a Collector by the Code or by any law for the time being in force, in relation to the Sub Division in his charge. It is, therefore, abundantly clear that the SDO was justified in exercising the power of the Collector under Section 23(2) since section 13(4) of the Code of 1966 specifically empowers the SDO to exercise a power of the Collector contained in any law for the time being in force.

It has then been urged that the SDO purported to exercise his jurisdiction as though he was exercising an appellate jurisdiction. It is clear from the order of the SDO that a remedy would lie under Section 23(2) of the Mamlatdars' Courts Act, 1906. A revision under Section 23(2) was the remedy which was available against the order of the Mamlatdar. On merits the SDO has held that no right of way was shown in village map. The power

of the Mamlatdar under Section 5(1) is to deal inter alia with a complaint of an obstruction inter alia caused to a right of way. In the present case, the SDO concluded that right of way was not shown to be in existence and that consequently, the order passed by the Mamlatdar could not be regarded as legal or proper. In the circumstances, no case for interference under Article 227 of the Constitution is made out. The petition is dismissed.

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